IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 615 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - I - Appellant(s)
Versus
GUJARAT STATE FERTILIZER CO. LTD. - Opponent(s)

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Appearance :
MR MANISH R BHATT for Appellant(s) : 1,
MR MANISH J.SHAH FOR MR JP SHAH for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 20/12/2005

ORAL JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1 On 25/11/2005 this Court had issued notice only qua proposed question No.1 out of the three questions proposed by the appellant. In response to the said notice Mr.M.J.Shah, learned Advocate appears on behalf of the respondent.

2. Heard Mr.M.R.Bhatt, learned Senior Standing Counsel for the appellant revenue and Mr.M.J.Shah for the respondent assessee.

3. **ADMIT.**

4. The following substantial question of law arises for consideration :

> "[A] Whether on facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the expenditure incurred on

account of rent and repairs of guest house under Section 37(4)/37(5) of the Act was allowable as deduction?”

4.1 On behalf of the appellant reliance has been placed upon a decision of the Apex Court in the case of Britannia Industries Limited V/s. Commissioner of Income Tax & Another, (2005) 278 ITR 546 (SC) to submit that the issue in controversy in issue stands concluded in favour of the revenue by the said decision, which is not disputed by Mr.Shah on behalf of the respondent. In the circumstances, it is not necessary to set out the said facts and contentions in detail.

5 Applying the ratio of the aforesaid decision to the facts of the present case, it is held that the Tribunal was not justified in holding that expenditure incurred on account of rent and repairs of guest house under section 37(4)/37(5) of the Act was allowable as deduction. The

question is answered in the negative, i.e. in favour of the revenue and against the assessee.

6 The Appeal is allowed with no order as to costs.

Sd/- Sd/-
(D.A.Mehta,J) (H.N.Devani,J)

m.m.bhatt